



# Boulder County Collaborative Recapture Plan

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## Overview

The Collaborative is responsible for making a good faith effort to fund only eligible applicants and projects with CDBG-DR funds HUD. The City, as Lead Agency for the Collaborative, is also responsible for monitoring residents under the Longmont Housing Assistance Program or Delegates for all other programs (collectively, “recipients”) of the CDBG-DR funds for compliance with the terms of their award. In the execution of these responsibilities, the City requires recipients who did not spend the funds according to the rules of the Program, who received duplicative disaster assistance funding for the same purpose after award of funds, who received duplicative disaster assistance funding for the same purpose before the award of funds but the funding source is discovered after award of funds, or who were awarded funds erroneously, to return any such funding back to the City. HUD does not distinguish between persons who received funds due to an error on the part of staff or an error on the part of the applicant, however HUD does have different recapture (also referred to herein as “collection”) processes for recipients who deliberately withheld or falsified information in the application process, as this is fraud.

HUD has no set guidelines or regulations for recapture of funds from individuals. This plan and timeframe was designed to be consistent with 76 FR 71060 et seq., 2 CFR Part 200), 24 CFR 17 Subpart C, 31 CFR, Forgivable Promissory Notes, Homeowner/Contractor Agreements, closing documents, and/or Grant Agreements signed by recipients of the Program, and is designed to provide guidance on recapturing funds erroneously awarded or erroneously spent through the Program from the 2013 flood in Boulder County.

The Statute of Limitations for initiating recapture proceedings is six (6) years following signature on the application forms, pursuant to 24 CFR § 28.35(a).

Pursuant to 24 CFR § 570.706, HUD retains the right to be subrogated for any duplicative funding received by a recipient. Where CDBG-DR funds were awarded that unknowingly created a duplication of benefit, or where CDBG-DR funds were awarded based on incomplete duplication of benefits information, the City will follow its procedures for recapturing erroneously-awarded funds. Where CDBG-DR funds were awarded based upon deliberately withheld or falsified information that created a duplicative benefit to the recipient, the City will follow its procedures for recapturing fraudulently-obtained funds.

## Background

The City, as the Lead Agency for the Collaborative, conducts an internal review of Program files. The review is to determine that, in the awarding and disbursing of Program funds, the files are documented according to Program policies. Documentation must be in the files and the review is to determine whether safeguards exist to ensure that recipients use funds for their intended purposes.

## Choice to Not Recapture or Settle for Less than Whole Amount

The various federal regulations cited above establish the City as the Lead Agency with authority to recapture the full amount of ineligible assistance whether awarded due to errors by a recipient. For claims under \$100,000, if the City, State, or HUD determines that the recipient cannot repay ineligible grant assistance, the Collaborative may choose to 1) forgive the funding; or 2) negotiate another amount. If negotiated, the City may enter into a repayment plan with the recipient, defer the repayment to sale, refinance, or transfer of the existing home or otherwise place a lien on the property pursuant to a note and deed of trust. Where no prior lien existed, a new note and deed of trust would be put in place. Where a prior lien existed, the note and deed of trust would be amended or released and a new note and deed of trust put in place. The Collaborative defines “ability to pay” as: “determined based on an assessment of the respondent’s resources available both presently and prospectively from which the Collaborative could ultimately recover the total award, which may be predicted based on historical evidence.”

The City will make initial determinations and bring findings to the Collaborative in determining whether to recapture ineligible assistance. The Collaborative will consider the cost effectiveness of such action, given the amount of ineligible assistance, and the availability of records to support BCC’s determination.

*The Collaborative may forgo collection of ineligible assistance if the following conditions are met:*

1. A demand for recovery of the ineligible assistance was made; **and**
2. The ineligible assistance did not result from inaccurate or false information, knowingly or fraudulently, provided by the recipient; **and**
3. The Collaborative determines that the recipient is unable to comply with the ineligible assistance repayment demand, but is otherwise willing and able to meet Collaborative requirements; **and**
4. The Collaborative determines that it is in the best interest of the Federal Government to forgo collection of the ineligible assistance for amounts less than \$5,000. The Collaborative will normally return files concerning default amounts that are less than a threshold amount of \$5,000 because the minimum cost to pursue a legal proceeding to recover money is unlikely to be less than that amount.

*Note that ALL FOUR conditions above must be met for forbearance.*

The Collaborative may elect to accept a compromise settlement, pursuant to 31 CFR § 902.2. If a compromise amount is negotiated and then put on an installment plan, the executed contract shall state that, in the event the recipient defaults under the terms of the installment plan, the ENTIRE amount of the originally-determined ineligible assistance, less sums paid thereon, will be reinstated and owed by the recipient, not just the negotiated amount. Assessment of a recipient’s negotiated compromise amount will be based on the recipient’s financial statements, obtained on penalty of perjury, showing assets, liabilities, income, expenses, credit reports, and other pertinent financial information, pursuant to 31 CFR § 902.2(g).

The first part of this plan deals with recapture procedures for funds awarded erroneously or for Program non-compliance. The second part of this plan deals with the recapture of funds obtained fraudulently. In

the third part of the plan, the Collaborative puts forth the method by which it will redistribute the recaptured funds within the local community.

## Requirements for Recapturing Funds Awarded Erroneously or for Non-Compliance with Program Rules

### *Notification*

The City will provide notice to recipients upon determining that ineligible assistance was received. The notice will be delivered by registered or certified mail, or will be delivered by some other means that can be confirmed and documented. The notice will:

1. Specify in detail the reason(s) that the assistance was determined to be ineligible, stating the amount of ineligible assistance to be repaid;
2. Offer a meeting for the recipient to discuss the basis for the claim giving the recipient an opportunity to provide facts, figures, written records, or other information that might alter the determination that the assistance was ineligible;
3. Outline the recipient's appeal rights;
4. Specify the address to which a response must be sent;
5. Contain a statement that failure to submit an answer within fifteen (15) days of receipt of the letter may result in the imposition of the maximum amount of penalties, allowable by law/regulation, and assessments sought.

Generally, the City will set the meeting within thirty (30) days of the date of the initial letter. Upon request, the City may grant additional time for the recipient to assemble the necessary documentation. If additional time is granted, the recipient file will be documented, on a case-by-case basis, as to why additional time was granted.

### *Corrective Action*

If the problem causing the assistance to be ineligible can be corrected, appropriate corrective action will be required. For example:

- Where the recipient is a homeowner and did not follow the Forgivable Promissory Note requirement to obtain flood insurance, the insurance must be obtained promptly, and upon demonstrating proof of insurance, the recipient will re-sign the Forgivable Promissory Note in order to restart the term of the loan, also known as the Effective Period.
- If the recipient is a homeowner and is not using the house as his or her primary residence,

when the recipient proves (s)he has moved into the home permanently, the Forgivable Promissory Note document will be re-signed and the Effective Period will restart.

- If the recipient is a Delegate who executes a change order on an infrastructure project without a sufficient cost estimate and signatures, then the recipient will need to obtain a cost estimate that justifies the change in costs and also get appropriate signatures.

If the recipient is a homeowner and the problem causing the assistance to be ineligible cannot be corrected, a recipient who has defaulted on the requirements but wishes to remain in the dwelling may stipulate to reverting from the current loan structure and converting the loan into a conventional non-forgivable mortgage loan having a fixed term (between five (5) and fifteen (15) years), or into a deferred loan with repayment of principal and interest due at sale, refinance, or transfer of the property at the currently prevailing interest rate. Examples of an irremediable violation of a Forgivable Promissory Note are:

- The homeowner is renting the property and is unwilling to terminate the lease.
- The homeowner will not allow final inspection.
- The homeowner received more monies than what was reported in the application for federal assistance.

If a homeowner recipient of assistance under the Buyout or Acquisition Programs refuses a repayment plan or ceases payments on the repayment plan, the City will institute legal proceedings, under any and all remedies available to it, to recover the funds from the recipient. Such remedies will not be limited to proceedings against the purchased or acquired property and may include actions against other sources of funds of the recipient, since there will be no mechanism available for the City to lien a property that was already sold.

If a Delegate recipient has expended funds ineligibly and a corrective action cannot be determined, then the City will negotiate a zero interest loan repayment plan with the recipient.

### *Repayment Agreement*

A repayment agreement is a formal document prepared by the City and signed by the recipient, in which the recipient acknowledges the debt and the amount owed. The agreement specifies:

1. The amount to be paid, including processing fees;
2. How the amount owed is to be repaid;
3. Where payments are to be sent;
4. The specific date the payment is due each month; and
5. Consequences of delinquent or defaulted payments.

The recipient will pay a set fee each payment period equaling the repayment amount, plus the processing costs of collection, pursuant to 31 CFR § 901.9(c). 31 CFR 901.9(g) allows the City to decide not to charge interest on the repayment agreement if it can be shown that interest is “against equity and good conscience.” Collaborative approval of a repayment schedule will take into consideration the best interests of the recipient, the Collaborative, the State of Colorado, and the Federal Government.

When the recipient is a homeowner, the terms will not require prohibitive payments that would force the recipient to sell the property (except in cases of fraud), and will be over a period of time consistent with the recipient’s ability to pay. The City will not pursue the debt if notification of the right to collect the debt has not been communicated to the recipient within ten (10) years of when the City’s right to collect the debt first accrued, unless facts material to the City’s right to collect were not known, pursuant to 31 CFR § 901.3(a)(4).

Pursuant to 31 CFR § 901.8(c), a lien will be placed on the property for the duration of the payment schedule. The City will retain copies of all correspondence and a record of all conversations between the City and the recipient regarding ineligible assistance received by a recipient. If a recipient refuses to enter into a repayment schedule, the City will initiate enforcement actions, such as civil or criminal penalties, under any and all remedies available to it, to obtain repayment from the recipient. Such enforcement actions may include actions against other sources of funds of the recipient.

31 U.S.C. § 3711(e) states that HUD, (the City in this case), must report the recipient to the Consumer Credit Reporting Agencies if the recipient goes past due on the payment plan or if a settlement is not reached.

## Requirements for Collecting Ineligible Assistance Obtained by Possible Fraud

*NOTE: 24 CFR § 28.10(d) states that “no proof of specific intent to defraud is required to establish liability” under this Program.* If the Collaborative paid too much assistance on the recipient’s behalf because of discrepancies in information furnished by the recipient, and if the City has sufficient evidence that the recipient intentionally misrepresented its circumstances, the City must pursue debt collection. In cases where the City has compelling evidence that the recipient knowingly omitted or falsified information in order to receive a Housing Assistance Grant, Buyout or Acquisition Assistance, Rental Assistance, or Infrastructure Grant, the City will seek repayment of all ineligible assistance received by the recipient by turning the case directly over to the HUD Office of Inspector General (OIG) and local law enforcement officials.

### General Administrative Procedures

Pursuant to 31 CFR § 901.5, the City may choose to handle collections or may decide to hire a private collection agency to handle collections for this Program as long as the following conditions are met in the contract with the collection agency:

1. The collection agency is a City-approved collector who can transfer funds to the City;

2. The City retains the right to resolve disputes, to compromise debts (negotiate settlement amounts less than the full amount), suspend or terminate collection, and refer debt for litigation;
3. The collection agency cannot offer debtors discounts or incentives;
4. The contract with the collection agency requires the collection agency to follow the Privacy Act of 1974 and state and federal laws for debt collection practices, including the Fair Debt Practices Act, 15 U.S.C. § 1692; and
5. The collection agency accounts for all amounts collected.

The City will be responsible for file and documentation maintenance, communication with recipients, and arrangements for appeals hearings. The City is also responsible for reports to the State or HUD. The City will manage procurement of a private collection agency and payment of same, if this method of collection is chosen, and other financial matters associated with the Program, using approved Collaborative and federal procurement and financial accounting standards if it chooses to hire a collection agency.

The City will maintain full and complete documentation of all debts, calculations performed, and communications with recipients. In all communications, precaution will be taken to prevent the distribution of any Personally Identifiable Information (PII).

Administrative costs on recapture will reflect only the actual costs of recapture.

The City or designee will collect the monies due, and all collection data will be entered as a miscellaneous "Housing Program Collection," "Buyout Program Collection," or "Infrastructure Program Collection." This category will be added to the City's financial chart of accounts. The City will ensure that all money collected from the recipient is reported to the State and/or HUD and repaid to the State and/or HUD, if required.

### Redistribution Plan

Any funds recaptured by the City through its efforts will be returned to the Collaborative account. These funds will be made available for redistribution by the Collaborative within the Housing Assistance Program, Buyout and Acquisition Program, or the Infrastructure Program, whichever is applicable. Funds recovered from the program will be reassigned to the same Program. New recipients will be selected from the wait list in priority order based on the existing Program rules.

New recipients will be identified and contacted as funds become available. No commitments will be made based on projected collections.

If collected funds exceed eligible recipients at the Program end, remaining collected funds will be transferred to another CDBG-DR eligible activity after approval by the State or HUD of a substantial amendment to the action plan.

## APPENDIX A

# STEPS IN THE PROCESS FOR THOSE ELIGIBLE TO RESTART THE EFFECTIVE PERIOD

1. Verify, to the extent possible, that all information in the recipient's file is current, complete and accurate.
  
2. The City will send a certified NOTICE OF CONCERNS REGARDING PROMISSORY NOTE EFFECTIVE PERIOD letter to the recipient indicating that the recipient is out of compliance on Forgivable Promissory Note, but that the five year Effective Period can be restarted by having the recipient agree to comply with all provisions of the Promissory Note. Appeals info is also included in the letter.
  - a. If the recipient responds to the initial notification within 15 days of the date of the letter and agrees to restart the Effective Period, complete all required paperwork to document the resolution of compliance issues, have the recipient re-sign the Promissory Note with the new Effective Date, and restart the Effective Period; no further action is required and recapture is not necessary.
  
  - b. If the recipient responds to the initial notification within 15 days of the date of the letter and opts to appeal, s/he must follow the procedure outlined in BCC Appeals Procedure, copies of which are available from the City.
  
  - c. If the recipient responds to the initial notification within 15 days of the date of the letter and opts to pay back the funds, the City will work with the recipient to negotiate a repayment plan and complete necessary documentation. The City may negotiate a reduced or fully waived repayment under certain conditions of financial hardship proven by the recipient. Assessment of a recipient's negotiated compromise amount will be based on recipient financial statements, obtained on penalty of perjury, showing assets, liabilities, income, expenses, credit reports and other pertinent financial information. This reduction of payment must have prior approval from the State or HUD. The City will place a lien on the property for the duration of the payment schedule, and release it once the debt is fully paid. Actual administrative costs of recapture may be added to the payment amount each payment period.
  
  - d. If the recipient does not respond within 15 days from the date of the first letter, a second certified NOTICE OF SERIOUS ONGOING CONCERNS letter will be sent to the recipient. This letter clearly states the basis of the ineligible assistance determination and the amount of ineligible assistance to be repaid, along with the recipient's appeal rights and the specific actions to be taken by the City. This letter will also specify a date and time for a meeting with BCC officials - approximately 15 days from the date of this

letter - to discuss the issues stated in the letter. The recipient will have the opportunity to reschedule the meeting to a more convenient date and time, provided the response is prior to the originally scheduled meeting date.

3. If the recipient does not respond to the second letter within the allotted time period, a third certified FINAL DETERMINATION NOTICE/DEMAND LETTER will be sent to the recipient. This letter will state that recapture proceedings will be initiated 30 days from the date of the letter unless the recipient initiates the formal appeal process before then. If there is no response from the recipient, the file will be turned over to legal or a collection agency for recapture. The City will report the recipient to Credit Reporting Bureaus.
4. If a compromise amount is negotiated and then put on an installment plan, the contract must say that if the recipient defaults, s/he will owe the ENTIRE amount of the distribution, not just the negotiated amount.
5. For any negotiated settlements where full payment is not immediate, upon discharge of the debt, the discharge must be reported to the State or HUD.



# STEPS IN THE PROCESS OF RECAPTURING A NON-FRAUDULENT DISTRIBUTION

1. Verify, to the extent possible, that all information in the recipient's file is current, complete and accurate.

## For Housing Assistance or Buyout/Acquisition Program Recipients:

2. The City will send a certified NOTICE OF CONCERNS letter to the recipient detailing the specific compliance issue which compels recapture of the distribution.
  - a. If the recipient responds to the initial notification within 15 days of the date of the letter and can provide documentation proving compliance with the Forgivable Promissory Note, or in the case of buyouts, documentation to the contrary of funds received, update the file accordingly and document the satisfactory resolution.
  - b. If the recipient responds to the initial notification within 15 days of the date of the letter and can show that the concern stated in the letter can, in fact, be remediated and the recipient is willing to do so and restart the Effective Period, refer to STEPS IN THE PROCESS FOR THOSE ELIGIBLE TO RESTART THE EFFECTIVE PERIOD for guidance.
  - c. If the recipient responds to the initial notification within 15 days of the date of the letter and opts to appeal, s/he must follow the procedure outlined in BCC Appeals Procedure, copies of which are available from the City of Longmont.
  - d. If the recipient responds to the initial notification within 15 days of the date of the letter and opts to pay back the funds, the City will work with the recipient to negotiate a repayment plan and complete necessary documentation. The City may negotiate a reduced or fully waived repayment under certain conditions of financial hardship proven by the recipient. Assessment of a recipient's negotiated compromise amount will be based on recipient financial statements, obtained on penalty of perjury, showing assets, liabilities, income, expenses, credit reports and other pertinent financial information. This reduction of payment must have prior approval from the State and/or HUD. The City will place a lien on the property for the duration of the payment schedule, and release it once the debt is fully paid. Actual administrative costs of recapture may be added to the payment amount each payment period.
  - e. If the recipient does not respond within 15 days from the date of the first letter, a second certified NOTICE OF SERIOUS ONGOING CONCERNS letter will be sent to the recipient. This letter clearly states the basis of the ineligible assistance determination and the amount of ineligible assistance to be repaid, along with the recipient's appeal rights and the specific actions to be taken by the City. This letter will also specify a date and time for a meeting with BCC officials – approximately 15 days from the date of this letter – to discuss the issues stated in the letter. The recipient will have the opportunity to reschedule the meeting to a more convenient date and time, provided the response is prior to the originally scheduled meeting date.

- f. If the recipient does not respond to the second letter within the allotted time period, a third certified FINAL DETERMINATION NOTICE/DEMAND LETTER will be sent to the recipient. This letter will state that recapture proceedings will be initiated 30 days from the date of the letter unless the recipient initiates the formal appeal process before then. If there is no response from the recipient, the file will be turned over to legal or collection agency for recapture.

### For Delegates (BCC Partners) Recipients:

3. The City will send a certified NOTICE OF CONCERNS letter to the recipient detailing the specific compliance issue which compels recapture of the distribution.
  - a. If the recipient responds to the initial notification within 15 days of the date of the letter and can provide documentation proving compliance or a feasible alternative solution, update the file accordingly and document the satisfactory resolution.
  - b. If the recipient does not respond within 15 days from the date of the first letter, a second certified NOTICE OF SERIOUS ONGOING CONCERNS letter will be sent to the recipient. This letter clearly states the basis of the ineligible assistance determination and the amount of ineligible assistance to be repaid, along with the recipient's appeal rights and the specific actions to be taken by the City. This letter will also specify a date and time for a meeting with BCC officials -approximately 15 days from the date of this letter -to discuss the issues stated in the letter. The recipient will have the opportunity to reschedule the meeting to a more convenient date and time, provided the response is prior to the originally scheduled meeting date.
  - c. If the recipient does not respond to the second letter within the allotted time period, a third certified FINAL DETERMINATION NOTICE/DEMAND LETTER will be sent to the recipient. This letter will state that recapture proceedings will be initiated 30 days from the date of the letter unless the recipient initiates the formal appeal process before then. If there is no response from the recipient, the file will be turned over to legal or collection agency for recapture.
4. The City will maintain reports for collections not in default on a quarterly basis and aggregate the data.
5. The aggregated data will be reported quarterly to the State.
6. If a compromise amount is negotiated and the recipient is put on an installment plan, the contract must say that if the recipient defaults, the recipient will owe the ENTIRE amount determined ineligible, not just the negotiated amount.
7. For any negotiated settlements where full payment is not immediate, upon discharge of the debt, the discharge must be reported to the State and/or HUD.

# Approval and Revision Tracking

Policy and Procedure	BCC Recapture Plan	Original Approval Date	March 11, 2016
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Complete the below for each revision:			
No.	Brief Description of Revision	Delegate Approval	Date/Approval
1	Added specific subrogation language in response to monitoring request from DOLA; made grammatical corrections and minor language clarifications.	Boulder County City of Boulder Town of Jamestown Town of Lyons St. Vrain & Lefthand Water Conservancy District	